S.B. Regular First Appeal No. 77/1990
M/s Bakliwal Brothers & others Vs/. The Rajasthan Financial Corporation

Date of Order: 12.05.2006

HON'BLE MR. K.C.SHARMA, J.

Mr. Sanjay Mehrish for the appellants
Mr. D.K. Soral for the respondent

This civil first appeal under S. 96 CPC arises out of the judgment and decree dated 8.2.1990 passed by the learned Additional District Judge, Bundi thereby decreeing the plaintiffs' suit for 39,694/-.

Mr. Mehrish, appearing for the defendant appellants has challenged the impugned judgment and decree only on the ground of suit being barred by limitation. Referring the provisions of Article 113 of the Limitation Act, 1963, learned counsel submitted that the plaintiff must have filed the suit within a period of 3 years from the date the cause of action accrued. According to him the cause of action accrued to the plaintiff on 16.1.1980, the date on which the plaintiff had taken over possession of the assets of the defendants and, therefore, the suit must have been filed on or before 16.1.1983, whereas the plaintiff has filed the suit for recovery of outstanding amount

on 4.6.1983, which is clearly beyond the limitation of 3 years.

I have considered the above argument and gone through the impugned judgment and the evidence on record. The defendant sanctioned loan of a sum of Rs. 71,000/- in favour of defendant No.1 for purchase of plant and machinery. Accordingly hypothecation deed came to be executed by defendants No. 2 to 4, according to which the entire plant and machinery remained mortaged with the plaintiff and the defendants were to pay interest @ 9% on the loan amount. As per averments of the plaint, the defendants failed to pay installments and interest despite notices having been served on behalf of plaintiff. It was averred that neither the defendants started industry nor paid the installments of the loan amount and therefore, the plaintiff had no option but to service a notice under Sec. 30 of the State Financial Corporation Act, 1951 and requested them to make payment of the entire amount, but all in vain. Ultimately, the plaintiff in exercise of powers under Sec. 29 of the Act took over possession of the entire property on 16.1.1980. The property was put to auction on 23.2.1980 and the

auction was finalized in favour of one Kishan Gopal vide Ex.4.

It appears that the plaintiff vide its order dated 17.3.1980 cancelled the auction made in favour of Kishan Gopal. Feeling aggrieved by this order, Kishan Gopal filed a suit for declaration and for permanent injunction on 26.3.1980. The trial court vide order dated 13.5.1980 (Ex.6) granted temporary injunction and stayed the order cancelling the auction. After the injunction order was passed, an agreement to sale came to be executed in between the plaintiff and Kishan Gopal on 19.6.1980 as has been supported by witness Chunnilal.

Clause (12) of the letter of hypothecation of tangible movalbe property to secure loan authorises the plaintiff Corporation that if the net sum realised by such sale be insufficient to cover the balance then due to the Corporation, the Corporation shall be at liberty to sue the Borrower for the balance thereof and nothing herein contained shall be deemed to negative quality or otherwise prejudice the right of the Corporation to recover from the Borrower notwithstanding that all or any of the said hypothecated assets or any part thereof

not been realized.

In the case at hand, it is evident that the deficit of the balance of the amount recoverable from the defendants could be ascertained only on 19.6.1980 i.e. the date on which agreement to sale was executed after the auction sale stood finalized and hence the cause of action accrued to the plaintiff on 19.6.1980. I am fortified in my view by a judgment of the Division Bench of Bombay High Court in The Trustees of Port of Bombay Vs. Jayantilal L. Gandhi (AIR 1979 Bombay 12), wherein the Division Bench held that the deficit or the balance of the amount cl,aimable can only be ascertained after the auction sale is held.

For the reasons aforesaid, it must be held that cause of action arose to the plaintiff on 19.6.1980 and hence the suit having been instituted on 4.6.1983 i.e. within 3 years was within limitation as prescribed under Article 113 of the Limitation Act.

Resultantly, the appeal of the defendant appellants being dovoid of merit is liable to be dismissed and is hereby dismissed with no order as to costs.

(Khem Chand Sharma), J.